IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1356 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

CHAMANLAL K THAKKAR

Appearance:

1. Special Civil Application No. 1356 of 1991

MR HC Raval for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik Raval for the petitioner. Notice of rule issued by this court has been served upon the respondent but the respondent has not

remained present before this Court either in person or through any advocate. Therefore, this matter has been taken up for hearing in absence of the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour court concerned in Reference (LCR) No. 10 of 1989 dated 7th June, 1990 wherein the labour court has, while granting reinstatement in favour of the workman with continuity of service, has refused to grant back wages for the intervening period. While admitting this petition on 8th September, 1992 by issuing rule thereon, this court has not granted any interim relief against the reinstatement of the respondent workman.

Learned advocate Mr. Raval appearing for the petitioner has submitted that the past record of the respondent workman was produced by the petitioner corporation before the labour court and it was also pointed out by the advocate for the petitioner in his submissions made before the labour court that in past, number of misconducts were committed by the respondent workman and, therefore, dismissal is the only proper punishment and no reinstatement should be granted. He submitted that in view of the past record and the misconduct in question, the labour court ought not to have granted reinstatement in favour of the respondent workman. He has further submitted that then labour court has committed in error in coming to the conclusion that none of the past instances are relating to dishonesty and misappropriation and, therefore, punishment of dismissal is harsh and unjustified. He has further submitted that in past, about 42 misconducts were committed by the respondent workman but the labour court has not appreciated the past record in its proper perspective. According to him, mere denial of back wages for the intervening period is not sufficient punishment because, otherwise, the respondent is not entitled to claim the back wages for the intervening period as a matter of right. According to him, in this case, the labour court has, while exercising the powers under section 11A of the I.D. Act, 1947, has found that the order of dismissal was harsh and unjustified and, therefore, on that ground alone, the order of dismissal was set aside and, therefore, mere denial of back wages is not sufficient punishment looking to the past record and, therefore, it was the duty of the labour court to impose some more punishment having recurring effect.

I have considered the submissions made by the learned advocate for the petitioner. I have also

perused the award made by the labour court concerned. Upon perusal of the award in question, in para 7, last line, the labour court has observed in terms that the charge levelled against the respondent workman has been proved. The charge levelled against the respondent was that when his bus was checked, at that time, four passengers were found without tickets and the workman had not issued tickets to them and has not recovered fares from the said passengers till the bus was checked by the checking staff and this misconduct has been found to be proved, according to the observations made by the labour court and looking to the observations made by the labour court, the labour court has also come to the clear conclusion that looking to the incident as it is, conduct of the respondent workman appears to be suspicious. These are two clear findings recorded by the labour court against the respondent and after appreciating the past record produced by the corporation before the labour court, the labour court was of the view that the past misconducts are not relating to dishonesty and therefore, the labour court made the award of reinstatement with continuity of service without back wages for the intervening period. In view of these facts and also in view of the clear findings recorded by the labour court against the respondent workman, according to my opinion, the labour court has committed error in not imposing any punishment against the respondent for the misconduct which has been found to be proved. According to my opinion, in such cases, mere denial of back wages for the intervening period cannot be considered to be sufficient punishment looking to the misconduct in question as wellas the past record of the respondent workman. Therefore, without disturbing the award of reinstatement with continuity of service without back wages for the intervening period, the award of the labour court concerned is required to be modified by imposing punishment of stoppage of two annual increments with cumulative effect.

For the reasons recorded hereinabove, this petition is partly allowed. Without disturbing the award of reinstatement with continuity of service without back wages for the intervening period, the award of the labour court concerned is hereby modified by imposing punishment of stoppage of two annual increments with cumulative effect. Rule is made absolute in terms indicated hereinabove with no order as to costs.

10.4.2002. (H.K. Rathod,J.)